

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LUIS A. DUTTON

:
Plaintiff :
: CIVIL NO. 3:CV-10-0174
v. :
: (Judge Caputo)
SHANE WILSON, et al., :
:
Defendants :

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This matter was transferred from the Western District of Pennsylvania to this Court in January 2010 and involves events that took place in September 2008 while Mr. Dutton was incarcerated at the Potter County Jail.¹ Mr. Dutton filed his Complaint in July 2009. (Doc. 1, Compl.) Prior to service of the Complaint, he filed an Amended Complaint. (Doc. 3, Am. Compl.) Defendants then filed an Answer to the Amended Complaint on October 30, 2009. (Doc. 21). Prior to the transfer of this matter to this Court, Mr. Dutton filed a motion for leave to amend his complaint to include a request for nominal and punitive damages. (Doc. 35). That motion was not ruled upon prior to the case being transferred to this district. That motion (redocketed as doc. 45) is presently before the Court for consideration and will be denied.

¹ Mr. Dutton is currently housed in a private correctional facility in Jamaica, New York.

As defendants point out in their opposition brief (doc. 40), Mr. Dutton has preserved his right to compensatory and punitive damages in this matter by including them in his Amended Complain. See Doc. 3, Am. Compl. at p. 9. Next, we consider his need to amend based on his failure to include a request for nominal damages in his Amended Complaint. Again, defendants are correct in pointing out that the prevailing case law of the Third Circuit Court of Appeals allows this Court to construe Mr. Dutton's *pro se* Amended Complaint as asserting a request for nominal damages without it explicitly doing so. See *Allah v. Al-Hafeez*, 226 F.3d 247, 251 (3d Cir. 2000)(construing pro se complaint to include claim for nominal damages where complaint sought only compensatory and punitive damages). Based on the above, no formal amendment of the Amended Complaint is necessary and Mr. Dutton's motion will be denied.

AND NOW, this 18th day of **October, 2010**, it is ordered that Mr. Dutton's Motion to Amend the Complaint (doc. 45) is denied.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge